

#### REMARKS

Applicants' attorney would like to thank the Examiner for the telephone interview in which the subject application was discussed.

Applicants object to the finality of the current Office Action in that each of the rejections therein were disposed of in Applicants' last Amendment but were not considered by the Examiner.

In particular, enclosed herewith is a copy of Applicants' Terminal Disclaimer executed by Paul Im. Contrary to the Examiner's statement in the current Office Action (and as confirmed by the Examiner in the above-noted telephone interview), Mr. Paul Im is indeed an attorney of record.

In view of the above, the judicially created non-statutory double patenting rejection of claims 1-26 and 66 over claims 1-11 of U.S. Patent 7,503,254, has been rendered moot.

The Examiner has further rejected claims 1-26 and 66 under 35 U.S.C. 112, paragraph 2, as being indefinite, in that claim 1 recites "fine bubble foam layer" while claims 6-11 and 13-16 recite the limitation "substantially".

Applicants submit, however, that each of these deficiencies had been addressed in Applicants' last Response and as such, this rejection has been rendered moot.

The Examiner has also rejected claims 1-26 and 66 under 35 U.S.C. 102(b) as being clearly anticipated by European Patent Application No. EP 1371311 A1 to Brouwer et al.

Applicants submit that this rejection was addressed by Applicants in Applicants' last Response as follows:

"Claim 1 has been amended to recite '[a] device for preparing a beverage, comprising: a beverage unit supplying the beverage under pressure, a nozzle in fluid communication with the beverage unit such that the nozzle generates a jet of the beverage, and a receiving unit into which the jet is directed, the receiving unit comprising: a chamber having a drain opening and a *channel extending to the nozzle*, and a jet impact member disposed within the chamber and having a top which does not contact an inner wall of the chamber,

wherein the nozzle and the jet impact member are mutually oriented such that the jet hits against at least a portion of the top of the jet impact member so that the beverage, after hitting against the jet impact member, leaves the chamber through the drain opening in the form of the beverage having a foam layer, *wherein air can be supplied to the chamber exclusively through the drain opening.*'

"Brouwer discloses an apparatus for preparing a beverage that includes a nozzle (4), which generates a jet (12) of the beverage that strikes a jet impact element (20) in a chamber (16). (See Brouwer, col. 4, ¶ [0020]). However, Brouwer explicitly discloses

'nozzle is positioned, in this example, at some distance from the inlet opening 30 of the channel 28. As a result, air 34 is, in use, also drawn by the jet 12 into the chamber 16 via the inlet opening 30 of the channel 28. The product supply opening 32 of the chamber 16 hereby also functions as an air supply opening 32.' (See Id., col. 5, ¶ [0023], Figs. 1-2).

"In contrast, claim 1 recites that the chamber has '*a channel extending to the nozzle.*' Brouwer explicitly discloses that the nozzle is at some distance from the inlet opening of the chamber. The result of this channel extending to the nozzle is further clarified in claim 1 which also recites that 'air can be supplied to the chamber exclusively through the drain opening.' The air supply opening 32' of Brouwer clearly teaches away from this exclusivity. Therefore, it is respectfully submitted that claim 1 and its dependent claims 2-26 and 66 are allowable over Brouwer."

Applicants note that these arguments by Applicants were not addressed by the Examiner in the Final Office Action.

Applicants therefore believe that the finality of the current Office Action is premature, and that indeed, the subject invention is neither anticipated nor rendered obvious by the prior art, and as such, is patentable thereover.

Applicants believe that this application, containing claims 1-26 and 66, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

by /Edward W. Goodman/  
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